

In re) Fair Hearing No. 9951
)
Appeal of)

The petitioner appeals the decision by the Department of Social Welfare disqualifying the petitioner from receiving ANFC benefits for 1.8 months due to her receipt of a lump-sum payment of \$2,000.00. The issue is whether the money in question is unavailable to the petitioner for reasons beyond her control.

The petitioner, until August 1, 1990, lived with her two children and a niece in a rent-subsidized apartment. In July, 1990, the petitioner received a \$2,000.00 in a lump sum as settlement in a lawsuit. As a result, the Department notified her that she would be disqualified from receiving ANFC for 1.8 months--August and most of September, 1990.

At that time the petitioner was involved in eviction proceedings brought on by disturbances at her apartment caused by a relative of the petitioner. After receiving her lump sum, the petitioner agreed to settle her eviction case by vacating her apartment. In exchange for the return of her rent deposit¹ and the retention of her Section 8 certificate, the petitioner agreed to clean and paint the apartment she was

vacating. On or about August 1, 1990, the petitioner moved her belongings into storage. She and her children have stayed with her mother and sister-in-law while she has looked for another apartment--thus far, unsuccessfully.

As of August 29, 1990, the day of her hearing, the petitioner stated she had spent a total of \$1,133.29 for moving expenses, storage, paint and cleaning supplies, a past due utility bill, and car repairs. She maintained that she had also spent unspecified amounts on food and gas while looking for housing. She stated that she had only \$800.00 of her lump-sum settlement left over. However, because she filed her appeal of the Department's decision in a timely manner, she also had continued to receive her ANFC benefit of \$742.00 for August and September, 1990. This, plus the rent deposit that had been returned means that the petitioner had in less than a month spent close to \$1,000.00 in addition to the \$1,133.29 she claimed as moving expenses, car repairs, and past-due bills.

The petitioner's testimony as to this money was vague and unconvincing. The petitioner stated it had mostly gone for gas and "extra food" that she had spent while looking (unsuccessfully) for another apartment.² The petitioner did not claim that she was incurring rent or other direct housing expenses while she was living with relatives.³ Based on the evidence presented the hearing officer can

neither find nor assume that all or even most of this money was spent by the petitioner on her and her family's "basic needs" or on any other deemed "necessity."

ORDER

The Department's decision is affirmed.

REASONS

Ordinarily, when an individual receives a lump-sum payment her household becomes ineligible for ANFC for the number of months obtained by dividing the household's monthly "standard of need" (which is set by regulations--see W.A.M. § 2245.2) into a total amount of the lump-sum. W.A.M. § 2250.1. However, the same regulation allows the Department to "offset" amounts against the lump-sum in the following three instances:

- 1) An event occurs which, had the family been receiving assistance, would have changed the amount paid;
- 2) The income received has become unavailable to the family for reasons beyond their control;
- 3) The family incurs and pays for medical expenses which offset the lump-sum income.

In all the past cases in which the board has allowed an "offset" to lump-sum income under subsection (2), above, it has been found that the individual incurred "necessary" expenses above and beyond those "budgeted" by the Department's "basic needs." See Fair Hearings No. 9629, 9458, 9407, 9273, and 9072. In those cases the board assumed that the families' actual basic needs at least equaled the Department's standards. Therefore, the

petitioners in those cases did not have to "prove" that they spent the portion of their lump sums to cover basic needs in amounts already determined by the Department (see W.A.M. 99 2245.2--.3) to be the minimum reasonably necessary.⁴

In this case, however, the petitioner was not incurring expenses for "rent", "fuel" or "utilities" during the period in question. Virtually all of her claimed "excess expenses" (1,133.29) were incurred instead of rather than in addition to her normally-budgeted "housing expenses."⁵ According to the petitioner's testimony, however, she had also spent about \$1,000.00 the previous month in addition to her claimed and itemized "excess expenses" (supra). This money is largely unaccounted for and is well in excess of the Department's "budgeted" amounts for non-housing-related "basic needs."⁶ The petitioner appears to argue that "homelessness" results per se in the incurring of increased costs for "basic needs." On the basis of the evidence presented, however, the hearing officer cannot conclude that this was, in fact, the case herein.

In all lump-sum cases the burden of proof is on the petitioner to establish that all or part of a lump sum is "unavailable for reasons beyond the petitioner's control." See cases cited, supra. In this case the petitioner simply has not shown that she was without sufficient income during the period in question to meet her "basic needs" and any other "necessities" that arose. She did not show that the

money she did spend was for "necessities" over and above what the Department "budgets" for "basic needs." For these reasons, it must be concluded that the petitioner has not met her burden of proof under the regulations (*supra*) to "offset" any of the lump sum in question. The Department's decision is, therefore, affirmed.

FOOTNOTES

¹The amount of the deposit was not indicated at the hearing. The hearing officer assumes, however, it was in excess of \$173.00 (see infra).

²The petitioner stated that her mother and sister-in-law lived about 50 miles from the area where the petitioner had previously lived and where she was looking for permanent housing. The petitioner did not say how often she drove to look for housing and she did not establish that these drives (regardless of how many) were "necessary"--i.e., that she couldn't have looked for housing closer to where she was living or used a phone to reduce or eliminate the need for so much driving.

³The petitioner testified only that she had paid a sister \$20.00 for "rent."

⁴W.A.M. §§ 2245.2--.3 list "basic needs" as housing, food, fuel, utilities, clothing, personal needs and incidentals, chore, and special needs.

⁵Of the \$2,000.00 lump sum, about 48 percent (960.00) would be "budgeted" under W.A.M. §§ 2245.2-3 for "rent," "fuel," and "utilities." This is only \$173.00 (see footnote 1, supra) less than the amount the petitioner claims to have spent (\$1,133.29) as a result of having had to move. However, the petitioner's rent deposit should have been more than sufficient to cover this "shortfall."

⁶Under the regulations (id.), about 52 percent (\$1,040.00) of the lump sum would be "budgeted" for these needs. There is no basis in the evidence to find that the petitioner in 1.8 months had spent, or would reasonably be expected to spend, more than this amount (in addition to the \$1,133.29, described above) on "necessities".

#